

High Technology Business Tax Incentives

Sales/Use Tax Deferral/Waiver Program & B&O Tax Credit Program (Extended and Revised) Small Business Grants Exempted from B&O Tax

During the 2005 legislative session, the Legislature passed Engrossed Substitute House Bill (ESHB) 2314, Part X (Chapter 514, Laws of 2005) to retroactively remedy an error in the definition of "average tax rate" contained in Engrossed Substitute House Bill 2546 (Chapter 2, Laws of 2004). The bills, both effective June 10, 2004, made substantial changes to tax incentive programs for high technology businesses. This fact sheet summarizes those changes, including correcting the definition of the term "average tax rate."

HIGH TECH B&O TAX CREDIT PROGRAM

Effective June 10, 2004, the high technology business and occupation (B&O) tax credit program for research and development (R&D) in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology is modified as follows:

The expiration date for the program is extended to **January 1, 2015**.

Persons will no longer file a Declaration, Research and Development Credit form (Rev 26 0003) with the tax return in which they are claiming the credit.

Persons claiming the credit must file an annual report and a completed Annual Survey. The survey is due by March 31 of the year following the year in which a credit is taken. If a person fails to complete the survey by the due date, that person is not eligible to take the credit for the entire year in which the survey was due.

IMPORTANT DEFINITIONS

Average tax rate: means a person's total B&O tax liability for the calendar year for which the credit is claimed divided by the taxpayer's total taxable amount under the B&O tax for the calendar year for which the credit is claimed.

Taxable amount: means the taxable amount subject to the B&O tax and required to be reported on the person's excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440 (Multiple Activities Tax Credit).

Research and development spending: means qualified research and development expenditures plus 80 percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

Qualified research and development expenditures: means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the Department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

Qualified research and development: means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

CALCULATING THE CREDIT RETROACTIVE TO JUNE 10, 2004

If the person meets the threshold of research and development spending to qualify for the credit, the credit shall be calculated as follows:

Step 1: Determine the greater of the amount of qualified research and development expenditures of a person or 80 percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development.

Step 2: Subtract 0.92 percent of the person's taxable amount from the amount determined in step one.

Step 3: Multiply the amount determined under step two by the following:

- For the period June 10, 2004, through December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;
- For the calendar year ending December 31, 2007, the greater of the person's average tax rate for that calendar year or 0.75 percent;
- For the calendar year ending December 31, 2008, the greater of the person's average tax rate for that calendar year or 1.0 percent;
- For the calendar year ending December 31, 2009, the greater of the person's average tax rate for that calendar year or 1.25 percent;
- For the calendar year ending December 31, 2010, and thereafter, 1.50 percent.

END OF THE YEAR RECONCILIATION REQUIRED

For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed by using the person's average tax rate for each reporting period. A person who uses an estimated average tax rate must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

PENALTY WAIVED, INTEREST DUE ON ADDITIONAL TAX

A person who owes additional tax as a result of the changes in how the credit calculated is liable for interest, but not penalties, if the entire additional tax liability is paid in full to the Department of Revenue before January 1, 2006. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the additional tax is repaid.

Persons who fail to repay the full amount of additional tax owed before January 1, 2006, are subject to all applicable penalties and interest as provided in chapter 82.32 RCW on the additional tax owed.

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ELECTRONIC FILING REQUIRED

Virtually all persons receiving tax benefits from the high technology B&O tax credit provided by RCW 82.04.4452 must file all returns, surveys, reports, and any other required forms or information in an electronic format as provided or approved by the Department effective January 1, 2006.

However, upon request, the Department may relieve a person from the requirement to file electronically if the person's cumulative tax benefit from high technology credit (RCW 82.04.4452) and from the incentive programs provided by semiconductor (82.32.535), aerospace (82.32.545), aluminum smelters (82.32.570), electrolytic processing (82.32.560), rural county/CEZ sales tax deferral/waiver program (82.60.070), or high technology sales tax deferral/waiver program (82.63.020) is less than \$1,000 annually.

ANNUAL SURVEY DUE DATE MAY BE EXTENDED

By law, the Department of Revenue may extend the due date for the Annual Surveys due after December 31, 2004 when the failure of a taxpayer to file the survey by the March 31 due date was the result of circumstances beyond the control of the taxpayer. The Department will use the criteria in making this determination that are outlined in WAC 458-20-228.

HIGH TECH SALES/USE TAX DEFERRAL/WAIVER PROGRAM

Effective **June 10, 2004**, the retail sales tax and use tax deferral program for eligible investment projects involving research and development (R&D) or pilot scale manufacturing operations in the fields of advanced computing, advanced materials, biotechnology, electronic device technology and environmental technology is modified as follows:

The expiration date for the program is extended to **January 1, 2015**.

Participants in the program must complete an Annual Survey. The survey is due by March 31 of the year following the year in which the project is certified by the Department of Revenue as operationally complete, and each March 31 of the seven succeeding calendar years. If the survey is not completed by the due date, 12.5 percent of the deferred tax will be due for payment immediately.

"Initiation of construction" is defined to mean the date that a building permit is issued. An application for the deferral program must be submitted before the initiation of construction for projects involving construction.

An owner who leases property to a qualifying business may participate in the deferral program if the benefits of the program are passed to the lessee under a written agreement and the lessee agrees to complete the Annual Survey.

Persons engaged in construction activities for the federal government are not liable for sales and use tax on tangible personal property incorporated into a structure, if the construction project would have qualified for the deferral if undertaken by a private entity.

SMALL BUSINESS GRANTS

Effective **July 1, 2004**, amounts received for research and development under the federal small business innovation research program and the federal small business technology transfer program are exempt from B&O tax.